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Supreme Court, U.S.
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No. 04-168

IN THE SUPREME COURT OF THE UNITED STATES

Joseph Lee Grimm,
Petitioner,

v.

Charles S. Spell, a.k.a. Steve Spell,
Peter Vasquez, and
Prosscovia Biribawa,
Respondents

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITIONER'S REPLY TO BRIEFS IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT

The parties to this case are individuals, and no corporate entity is named in any capacity.

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT i

TABLE OF CITATIONS iii

ARGUMENT

I. THIS COURT'S JURISDICTION IS INVOKED UNDER RULE 10(C). 1

II. RESPONDENTS RELY ON SUBJECTIVE BELIEFS, NOT OBJECTIVE REASONING. 2

III. THE COURTS BELOW IGNORE THE CANON OF *IN PARI MATERIA*. 4

IV. NO EXIGENCY/EMERGENCY EXCEPTION TO THE FOURTH AMENDMENT EXISTS IN THIS CASE. 5

V. ARGUMENTS ON THE CONSTITUTIONALITY OF FLORIDA STATUTES ARE IRRELEVANT. 6

VI. RESPONDENTS EVADE LEGAL DISTINCTIONS BETWEEN CLOSELY-REGULATED BUSINESS AND PRIVATE DWELLING PROPERTY. 6

VII. RESPONDENTS MISCONSTRUE THE STATE LAW ON CITRUS CANKER ERADICATION. 7

VIII. PETITIONER'S FOURTH AMENDMENT CLAIM DOES NOT PROSCRIBE THE FOURTEENTH AMENDMENT CLAIM. 9

IX. CONCLUSION 10

TABLE OF CITATIONS

CASES	PAGE
Anderson v. Creighton, 483 U.S. 635	2
Camara v. Municipal Court of the City and County of San Francisco, 387 U.S. 523	3, 8
Donovan v. Dewey, 452 U.S. 594	7
Graham v. Connor, 490 U.S. 386	10
Gray v. Mississippi, 481 U.S. 648	3
Harlow v. Fitzgerald, 457 U.S. 800	2, 3, 9
Herren v. Bowyer, 850 F.2d 1543 (11CA)	2
Hope v. Pelzer, 536 U.S. 730	1
Johnson v. United States, 333 U.S. 10	5
Michigan v. Clifford, 464 U.S. 287	5
Michigan v. Tyler, 436 U.S. 499	8
Miranda v. Arizona, 384 U.S. 436	3
Nordlinger v. Hahn, 505 U.S. 1	10
North American Cold Storage v. City of Chicago, 211 U.S. 306	5
Payton v. New York, 445 U.S. 573	8
Singleton v. Larson, 46 So.2d 186	4
Soldal v. Cook County, 506 U.S. 56	10
United States v. Dunn, 480 U.S. 294	8
United States v. James Daniel Good Real Property, 510 U.S. 43	10
Vale v. Louisiana, 399 U.S. 30	5
Whitman v. National Bank	4

CONSTITUTIONS and STATUTES	
Fourth Amendment	4
Florida Constitution	6
Florida Constitution, Article I, §12	3, 4, 6, 7
Fla. Stat. Chapter 581	6

Fla. Stat. §581.031 (2000)..... 4, 7
Fla. Stat. §581.031(15)(a)..... 2, 8, 9
Fla. Stat. §581.184(7)..... 9
Fla. Stat. §581.211..... 9
Fla. Stat. Chapter 933..... 3, 6

OTHER

Florida Administrative Code..... 7
F.A.C. 5B-58.001..... 4, 7, 8

ARGUMENT

This Reply Brief addresses new points raised in two separate Briefs in Opposition; one on behalf of Respondent Charles S. Spell, the other on behalf of Respondents Peter Vasquez and Prosscovia Biribawa. In reference to these separate briefs within the context of this reply, petitioner abbreviates them, respectively, as the "***Spell Brief***" and the "***Vasquez Brief***".

I. THE COURT'S JURISDICTION IS INVOKED UNDER RULE 10(C).

Respondents argue that the Petitioner has "... *not identified any basis for invoking this Court's very narrow certiorari jurisdiction* [***Vasquez Brief***, *p. 1*], and that the ***Petition*** does not qualify under Rule 10(a).

Rule 10 states, in part: "*The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers: ... (c) ... a United States court of appeals ... has decided an important federal question in a way that conflicts with relevant decisions of this Court.*"

This Court has broad discretion in granting a petition for writ of certiorari where there are compelling reasons to do so. This Court's repudiation [***Hope v. Pelzer***, *536 U.S. 730, 741*] of the Eleventh Circuit's "*materially similar*" standard was ignored in the Eleventh Circuit's opinion dismissing this case on qualified immunity grounds. The Eleventh Circuit's decision is thus in conflict with this Court on that important matter, and others. The ***Petition*** recites the conflicts and invokes this jurisdiction under Rule 10(c).

II. RESPONDENTS RELY ON SUBJECTIVE BELIEFS, NOT ON OBJECTIVE REASONING.

Respondents claim to have "... *operated under a good faith belief* ..." [Vasquez Brief, p. 7], and that their "... *belief that such a warrantless search was authorized and lawful* ..." is "*reasonable*" under Florida law [*Ibid., p. 9*]. Respondent Spell argues that he reasonably believed that state statute authorized a warrantless, unconsented search of the Petitioner's premises [***Spell Brief**, pp. 7, 8, 11, 13*].

In a qualified immunity case, "*an ... official's subjective beliefs about the legality of his conduct are irrelevant*" [***Herren v. Bowyer**, 850 F.2d 1543, 1546 (11CA, 1988)* citing ***Anderson v. Creighton**, 483 U.S. @ 641*].

This Court effectively squelched the subjective aspect of "*good faith*" (qualified) immunity [***Harlow v. Fitzgerald**, 457 U.S. 800, 816-17*]. Hence, the standard for establishing eligibility for qualified immunity is the "*objective reasonableness*" of an official's material acts; that is, whether those acts "... *violate clearly established statutory or constitutional rights of which a reasonable person would have known*" [*Ibid., p. 819*].

This Court stated that, considering the question of qualified immunity: "*The objective element involves a presumptive knowledge of and respect for 'basic, unquestioned constitutional rights'* " [*Ibid., p. 816*].

Whatever the Respondents may have known or believed about state statutes or administrative regulations is not relevant in this regard, because the Petitioner's basic, unquestioned constitutional rights are guaranteed. It is clear from their arguments, however, that Respondents had no respect for the Petitioner's constitutional rights. There is no warrant exception expressed or implied in ***Fla. Stat. §581.031(15)(a)***; Respondents only assume such. The Courts below erred in finding to the contrary [***Petition Appendix**, pp.*

A-I-9; A-II-13, 14]. Respondents cannot objectively reason that no warrant were required and, therefore, do not meet the test for eligibility for qualified immunity under the ***Harlow*** standard.

Respondents' argument [***Vasquez Brief***, *p. 9*], that a warrantless, unconsented search was "*authorized and lawful*", is a mere declaration of their subjective belief. Respondents are not eligible for qualified immunity, because "*... a reasonably competent public official should know the law governing his conduct* [***Harlow***, *p. 820*]. The law governing search and seizure by Florida officials is in the federal constitution and the decisions of this Court, according to the ***Florida Constitution, Article I, §12*** [see ***Petition***, *p. vi.*], state court decisions to the contrary notwithstanding.

The Respondents repeatedly argue that their beliefs and material acts are "*reasonable*" [***Vasquez Brief***, *pp. 9, 14, 16;* ***Spell Brief***, *pp. 5, 6, 7, 8, 9, 12, 15*]. These claims are directly refuted by this Court. "*Except in carefully defined classes of cases, a search of private property without proper consent is '**unreasonable**' unless it has been authorized by a valid search warrant*" [***Camara v. Municipal Court ...***, *387 U.S. 523, 529-30*]. [Emphasis added.] This holding also directly refutes the findings of the Courts below to the effect that a "*reasonable*" officer or official could conclude that a state statute authorized a constitutional violation [***Petition Appendix***, *pp. A-I-9 and A-II-13*]. This court has written that "*Where rights secured by the federal constitution are involved, there can be no rulemaking or legislation which would abrogate them* [***Miranda v. Arizona***, *384 U.S. 436, 491*] and "*In a situation ... where a constitutional right comes into conflict with a statutory right, the former prevails* [***Gray v. Mississippi***, *481 U.S. 648, 663*].

The Eleventh Circuit errs in finding the Respondents' legal conclusions to be reasonable [*Ibid., p. A-I-9*].

III. THE COURTS BELOW IGNORE THE CANON OF *IN PARI MATERIA*.

The Florida Supreme Court has written that "*It is a recognized rule of statutory construction that statutes which relate to ... the same or closely allied subject or object may be regarded as in pari materia* [***Singleton v. Larson**, 46 So.2d 186, 190*]. This Court has written that "... *the Constitution* [of a state] *and the statutes* [of a state] *are to be taken together as making one body of law* [***Whitman v. National Bank**, 176 U.S. 559, 563*].

Respondents assert " ... *statutory authority to conduct a warrantless search ...*" [***Vasquez Brief**, p. 1*], and that they reasonably believed that such a warrantless search was justified by exigent circumstances [*Ibid,. p. 7, 9*]. Also, "... *Fla. Stat. 581.031 (2000), on its face, plainly authorized the Department Inspectors to inspect Grimm's trees without a warrant* [***Spell Brief**, p. 2. See also: Ibid., pp. 7-8, 13, 14, 15*]. The Eleventh Circuit erred in finding in favor of these assertions [***Petition Appendix**, pp. A-1-9*].

Fla. Stat. 581.031** (2000)* is not the only statute that relates to entry by state agents onto private premises. ***Chapter 933 of the ***Florida Statutes*** governs issuance and service of warrants. The ***Florida Constitution, Article I, §12*** governs search and seizure under the ***Fourth Amendment*** as interpreted by this Court [***Petition**, p. vi*]. As a matter of law, these govern the Respondents' material acts with equal, or greater, force and authority than do ***Fla. Stat. §581.031*** and ***F.A.C. 5B-58.001***. This Court has held that:

> *When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or Government enforcement agent. ... Any other rule would undermine 'the right of the people to be secure in their persons, houses, papers and effects,' and would*

> *obliterate one of the most fundamental distinctions between our form of government, where officers are under the law, and the police-state where they are the law.* [***Johnson v. United States***, *387 U.S. 541, 546*]

State law *in pari materia* prohibits the Respondents' material acts. The constraints of the law are as valid as its authority. Accordingly, Respondents' reliance on a narrow-scope selection of state law for their authority is contrary to established legal doctrine.

IV. NO EXIGENCY/EMERGENCY EXCEPTION TO THE FOURTH AMENDMENT EXISTS IN THIS CASE.

Respondents argue anew that their material acts were committed under exigent/emergency circumstances [***Vasquez Brief***, *pp. 1, 9-12*], in spite of the rejection of that argument by the Courts below [***Petition Appendix***, *pp. A-I-8, A-II-8*]. Exigent or emergency circumstances sufficient to overcome the warrant requirements of the Fourth Amendment must involve potential physical injury to persons [***Vale v. Louisiana***, *399 U.S. 30, 34-35*], potential destruction of evidence in a criminal matter [Ibid.], a health threat to persons [***North American Cold Storage v. City of Chicago***, *211 U.S. 306*], or intolerable delay associated with acquiring consent or a warrant [***Michigan v. Clifford***, *464 U.S. 287, 293*], for example.

No circumstance constituting such an exigency or emergency is present in this case. Accordingly, Respondents' arguments of exigent/emergency circumstances are baseless.

V. QUESTIONS OF CONSTITUTIONALITY OF FLORIDA STATUTES ARE IRRELEVANT

The Petitioner does not allege unconstitutionality of any statute, as written. The Petitioner's complaint demands, *ad damnum*, that the Respondents' administration and enforcement of certain statutes be declared unconstitutional.

It is not the language of the statutes that Petitioner argues to be unconstitutional; but rather the material acts of the Respondents under color of those statutes. That Respondents chose to act under color of ***Fla. Stat. Chapter 581*** and ignore ***Chapter 933*** and the ***Florida Constitution*** is a decision they made contrary to law. Respondents had actual notice of the ***Florida Constitution*** via their sworn oaths [***Petition***, *p. 5*].

The state legislature provided constitutional means for the Respondents to execute their statutory and administrative duties. Where consent to entry is denied, a search warrant must be acquired and served in accordance with ***Florida Statutes Chapter 933*** on the basis of probable cause. The standards for search and seizure are specified in the ***Florida Constitution, Article I, §12*** [see ***Petition***, *p. vi*].

Accordingly, the Respondents' arguments about the constitutionality of the statutes in question are irrelevant to the issues in this case [see ***Spell Brief***, *pp. 8-13*].

VI. RESPONDENTS EVADE LEGAL DISTINCTIONS BETWEEN CLOSELY-REGULATED BUSINESS AND PRIVATE DWELLING PROPERTY.

State regulation of certain types of businesses is cited by Respondents to justify violating the Petitioner's constitutional rights [***Vasquez Brief***, *pp. 13-16*]. The Petitioner's premises are occupied by a private dwelling and not used for any regulated or regulatable agricultural purpose [***Petition Appendix***, *p. A-II-3*].

Respondents extrapolate, from a body of case law

concerning business activities, that regulation of the state's citrus industry implicitly authorizes warrantless, unconsented searches and inspections on private dwelling premises [*Ibid., p. 16*]. Respondents cite no decisions of this Court that would support this extrapolation, ignoring the clear language of the ***Florida Constitution, Article I, §12*** [see supra].

Case law upholding the administrative searches of closely-regulated businesses has not been extended to broaden warrantless inspections of private dwelling premises [***Donovan v. Dewey***, *452 U.S. 594, 598*], except where residents therein are under court-ordered sanctions, such as probationers, child-protection situations, family services recipients, welfare recipients, or other "special needs" implicating a legitimate heightened government interest. No such situation is present in the case under petition. The District Court erred in applying "special needs" law to this case [***Petition Appendix***, *A-II-13, 14*].

Accordingly, none of the arguments about closely-regulated businesses is relevant to this case.

VII. RESPONDENTS MISCONSTRUE THE STATE LAW ON CITRUS CANKER ERADICATION.

Fla. Stat. §581.031 is a policy declaration of the Florida legislature in exercise of its constitutional authority. It authorizes the executive branch, through its Department of Agriculture and Consumer Services (DACS), to regulate specific agricultural activities within the state. By Florida law, that regulation is effected according to the rules and regulations set out in the ***Florida Administrative Code*** (F.A.C).

In its administrative capacity as a part of the executive branch, DACS promulgated rules and regulations for its Citrus Canker Eradication Program (CCEP), and published them in ***Chapter 5B-58.001*** of the ***Florida Administrative***

Code.

While ***Fla. Stat. §581.031(15)(a)*** establishes the State's policy on DACS agents' inspection authority, it does not elaborate the procedures or methods by which those inspections are executed; those details are elaborated in the ***F.A.C. Chapter 5B-58.001*** [***Petition Appendix***, *pp. A-II-1 through A-III-10*]. .

The language is explicit: "*This rule ... provides for entry of authorized representatives upon properties where citrus canker is known to exist or upon properties which have been exposed to citrus canker*" [@ ***5B-58.001(2)***]. The rule further provides that "... *owners and occupants of properties on which citrus canker is known or suspected to exist shall permit entry of authorized representatives*" [@ ***5B-58.001(16)***]. Whatever means by which DACS comes to know or suspect that citrus canker exists on a particular property must be lawful. The means by which DACS determines whether a particular property were "exposed" [see ***5B-58.001(1)(g)***] must also be lawful. [Cf. ***Spell Brief***, *p. 2.*]

If an owner or occupant asserts his Fourth Amendment rights and refuses consent to entry by DACS agents, then the law requires that entry not be had without a valid warrant. Respondents' claim, to the effect that ***Fla. Stat. §581.031(15)(a)*** is a blanket authorization for warrantless searches and inspections for plant pests anywhere and everywhere in the State [Spell Brief, pp. 2, 7, 8, 13, 15, 18], is without legal foundation. [see ***Camara***, supra, and ***Michigan v. Tyler***, *436 U.S. 499, 506*, as to administrative search; ***United States v. Dunn***, *480 U.S. 294, 301*, as to curtilage protection; ***Payton v. New York***, *445 U.S. 573, 586-87*, as to warrantless search of a home.]

Assuming that DACS lawfully determines that a particular property is exposed to citrus canker or lawfully learns that citrus canker exists on a particular property, then ***F.A.C. 5B-***

58.001(4) prescribes the procedure to be followed. If this procedure is followed, then, and only then, may DACS execute its "control procedures": destruction and removal of the citrus. Respondents did not follow this procedure.

It is, according to ***Fla. Stat. §581.184(7)***[1], during the destruction and removal process, and only then, that DACS may engage the assistance of the county sheriff. Respondent Spell's reliance on ***Fla. Stat. §581.211*** [***Spell Brief***, *pp. 2, 5, 6, 7, 8, 9, 11*], for authority to enter the Petitioner's property and threaten arrest and incarceration, is also without legal foundation. The grant of authority under ***Fla. Stat. §581.031(15)(a)*** is limited to DACS agents.

Respondent Spell acted beyond the limits of his "discretionary authority", and he is not eligible for qualified immunity, according to the ***Harlow*** standard. [Cf.: ***Petition***, *pp. 1-5*; ***Spell Brief***, *p. 3*]

Respondents Vasquez and Biribawa have no discretion to ignore or flout ***F.A.C. 5B-58.001***. Accordingly, they can have no "*discretionary authority*" under the circumstances of this case, and do not meet the ***Harlow*** standard to be eligible for qualified immunity.

IV. PETITIONER'S FOURTH AMENDMENT CLAIM DOES NOT PROSCRIBE THE FOURTEENTH AMENDMENT CLAIM.

Respondents argue that "*...the Fourth Amendment governs this case and not the more attenuated ... Fifth Amendment ...*" [***Spell Brief***, *p. 17*]; and, that the Petitioner "*... confuses the Fourth Amendment with equal protection principles* [***Vasquez***

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1. The Eleventh Circuit panel erroneously numbers this subsection as "581.184(**9**)" [***Petition Appendix***, *p. A-1-4*], which did not exist in the 2000 edition of the statute.

***Brief**, p. 19*]. A Fourth Amendment violation can be concomitant with an equal protection violation in the same act, as a matter of law.

This Court has written: *"We reject the view that applicability of one constitutional amendment preempts the guarantees of another. ... Certain wrongs affect more than a single right and, accordingly, can implicate more than one of the Federal Constitution's commands."* [***United States v. James Daniel Good Real Property**, 510 U.S. 43*, 48 (***Graham v. Connor**, 490 U.S. 386,* distinguished); citing ***Soldal v. Cook County**, 506 U.S. 56, 71*].

On the basis of the constructive classification of the Petitioner's property as "quarantined", the Petitioner's ***Fourth Amendment*** rights were violated. The ***Nordlinger*** decision [***Petition**, p. 13*] obliges "***heightened review***" of the classification as it was applied, or more accurately mis-applied, to the Petitioner.

IX. CONCLUSION

For the reasons argued above, the arguments of Respondents in opposition to the Petition ought to be rejected, and the Court should grant the petition for writ of certiorari to the Eleventh Circuit in this case.

By the Petitioner, *Pro Se*
Joseph Lee Grimm